

AMENDED IN ASSEMBLY MAY 13, 2014

AMENDED IN ASSEMBLY APRIL 9, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2108

Introduced by Assembly Member Eggman

February 20, 2014

An act to amend ~~Section~~ Sections 65007, 65865.5, 65962, and 66474.5 of, and to add Section 65007.1 to, the Government Code, relating to flood management.

LEGISLATIVE COUNSEL'S DIGEST

AB 2108, as amended, Eggman. Sacramento-San Joaquin Valley: flood management.

The Planning and Zoning Law prohibits the legislative body of a city or county within the Sacramento-San Joaquin Valley, after specified general plan amendments have been made, and corresponding zoning ordinances adopted, from taking specified actions regarding property located within a flood hazard zone unless the city or county makes specified findings including, among other requirements, that the local flood management agency has made adequate progress on the construction of a flood protection system that will result in a specified level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas, as specified. That law defines adequate progress as meaning that, among other conditions being met, critical features of the flood protection system are under construction, and each critical

feature is progressing as indicated by the actual expenditure of the construction budget funds.

This bill would instead require the city or county to make a finding that the local flood management agency is making adequate progress towards a flood protection system. This bill would authorize the Central Valley Flood Protection Board to determine, in its sole discretion, that preconstruction planning or design activities of a flood protection system by the local flood management agency are sufficient to constitute adequate progress. This bill would require this determination by the board to expire 18 months after it is made unless the flood protection system has progressed to construction or the local flood management agency submits a report to the board showing that adequate progress continues to be made. If the board determines that adequate progress is continuing, the bill would require this subsequent determination to expire 18 months after it is made. This bill would also revise the definition of adequate progress to include the critical features of the flood protection system being planned or designed and this determination by the board, if any, has not expired.

Existing law prohibits a city and county within the Sacramento-San Joaquin Valley from approving a discretionary permit or other discretionary entitlement for a project that is located within a flood hazard zone, unless the city or county finds, based on substantial evidence in the record, that certain criteria is met.

This bill would instead only prohibit a city or county from approving a discretionary permit or other discretionary entitlement for a building that would result in more than a 50% increase in allowed occupancy.

~~Existing law requires each city and county within the Sacramento-San Joaquin Valley, within 24 months of July 2, 2013, to amend its general plan to include specified data, policies, and implementation measures. The city or county is also required, not more than 12 months after the amendment of its general plan, to amend its zoning ordinance to be consistent with the general plan, as amended.~~

~~Existing law prohibits, after the general plan amendments and zoning ordinance amendments have become effective, each city and county within the Sacramento-San Joaquin Valley from approving specified permits that would result in specified construction located within a flood hazard zone unless the city or county makes specified findings, including, among others, that property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.~~

~~This bill would eliminate the requirement that the city or county make the finding described above, and would, instead, require the city or county to make a finding that the project is located in a developed area, as defined.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65007 of the Government Code is
2 amended to read:
3 65007. As used in this title, the following terms have the
4 following meanings, unless the context requires otherwise:
5 (a) “Adequate progress” means all of the following:
6 (1) The total project scope, schedule, and cost of the completed
7 flood protection system have been developed to meet the
8 appropriate standard of protection.
9 (2) (A) Revenues that are sufficient to fund each year of the
10 project schedule developed in paragraph (1) have been identified
11 and, in any given year and consistent with that schedule, at least
12 90 percent of the revenues scheduled to be received by that year
13 have been appropriated and are currently being expended.
14 (B) Notwithstanding subparagraph (A), for any year in which
15 state funding is not appropriated consistent with an agreement
16 between a state agency and a local flood management agency, the
17 Central Valley Flood Protection Board may find that the local
18 flood management agency is making adequate progress in working
19 toward the completion of the flood protection system.
20 (3) Critical features of the flood protection system are ~~under~~
21 either of the following:
22 (A) Under construction, and each critical feature is progressing
23 as indicated by the actual expenditure of the construction budget
24 funds.
25 (B) Being planned or designed and a determination of the
26 Central Valley Flood Protection Board, if any, pursuant to Section
27 65007.1, has not expired.
28 (4) The city or county has not been responsible for a significant
29 delay in the completion of the system.
30 (5) The local flood management agency shall provide the
31 Department of Water Resources and the Central Valley Flood

1 Protection Board with the information specified in this subdivision
2 sufficient to determine substantial completion of the required flood
3 protection. The local flood management agency shall annually
4 report to the Central Valley Flood Protection Board on the efforts
5 in working toward completion of the flood protection system.

6 (b) “Central Valley Flood Protection Plan” has the same
7 meaning as that set forth in Section 9612 of the Water Code.

8 (c) “Developed area” has the same meaning as that set forth in
9 Section 59.1 of Title 44 of the Code of Federal Regulations.

10 (d) “Flood hazard zone” means an area subject to flooding that
11 is delineated as either a special hazard area or an area of moderate
12 hazard on an official flood insurance rate map issued by the Federal
13 Emergency Management Agency. The identification of flood
14 hazard zones does not imply that areas outside the flood hazard
15 zones, or uses permitted within flood hazard zones, will be free
16 from flooding or flood damage.

17 (e) “National Federal Emergency Management Agency standard
18 of flood protection” means the level of flood protection that is
19 necessary to withstand flooding that has a 1-in-100 chance of
20 occurring in any given year using criteria developed by the Federal
21 Emergency Management Agency for application in the National
22 Flood Insurance Program.

23 (f) “Nonurbanized area” means a developed area or an area
24 outside a developed area in which there are fewer than 10,000
25 residents that is not an urbanizing area.

26 (g) “Project levee” means any levee that is part of the facilities
27 of the State Plan of Flood Control.

28 (h) “Sacramento-San Joaquin Valley” means lands in the bed
29 or along or near the banks of the Sacramento River or San Joaquin
30 River, or their tributaries or connected therewith, or upon any land
31 adjacent thereto, or within the overflow basins thereof, or upon
32 land susceptible to overflow therefrom. The Sacramento-San
33 Joaquin Valley does not include lands lying within the Tulare Lake
34 basin, including the Kings River.

35 (i) “State Plan of Flood Control” has the same meaning as that
36 set forth in subdivision (j) of Section 5096.805 of the Public
37 Resources Code.

38 (j) “Tulare Lake basin” means the Tulare Lake Hydrologic
39 Region as defined in the California Water Plan Update 2009,
40 prepared by the Department of Water Resources pursuant to

Chapter 1 (commencing with Section 10004) of Part 1.5 of Division 6 of the Water Code.

(k) “Undetermined risk area” means an urban or urbanizing area within a moderate flood hazard zone, as delineated on an official flood insurance rate map issued by the Federal Emergency Management Agency, which has not been determined to have an urban level of protection.

(l) “Urban area” means a developed area in which there are 10,000 residents or more.

(m) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(n) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources. “Urban level of flood protection” shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection.

SEC. 2. Section 65007.1 is added to the Government Code, to read:

65007.1. (a) The Central Valley Flood Protection Board may determine, in its sole discretion, that preconstruction planning or design activities of a flood protection system by the local flood management agency are sufficient to constitute adequate progress.

(b) A determination by the Central Valley Flood Protection Board pursuant to subdivision (a) shall expire 18 months after it is made unless either of the following occurs:

(1) The flood protection system has progressed to construction.

(2) The local flood management agency submits a report to the Central Valley Flood Protection Board, in the form and manner prescribed by the board, showing that adequate progress continues to be made. If the board determines, in its sole discretion, that adequate progress is continuing, this subsequent determination shall expire 18 months after it is made.

SEC. 3. Section 65865.5 of the Government Code is amended to read:

65865.5. (a) Notwithstanding any other law, after the amendments required by Sections 65302.9 and 65860.1 have

1 become effective, the legislative body of a city or county within
2 the Sacramento-San Joaquin Valley shall not enter into a
3 development agreement for property that is located within a flood
4 hazard zone unless the city or county finds, based on substantial
5 evidence in the record, one of the following:

6 (1) The facilities of the State Plan of Flood Control or other
7 flood management facilities protect the property to the urban level
8 of flood protection in urban and urbanizing areas or the national
9 Federal Emergency Management Agency standard of flood
10 protection in nonurbanized areas.

11 (2) The city or county has imposed conditions on the
12 development agreement that will protect the property to the urban
13 level of flood protection in urban and urbanizing areas or the
14 national Federal Emergency Management Agency standard of
15 flood protection in nonurbanized areas.

16 (3) The local flood management agency ~~has made~~ *is making*
17 ~~adequate progress on the construction of~~ *towards* a flood protection
18 system that will result in flood protection equal to or greater than
19 the urban level of flood protection in urban or urbanizing areas or
20 the national Federal Emergency Management Agency standard of
21 flood protection in nonurbanized areas for property located within
22 a flood hazard zone, intended to be protected by the system. For
23 urban and urbanizing areas protected by project levees, the urban
24 level of flood protection shall be achieved by 2025.

25 (4) The property in an undetermined risk area has met the urban
26 level of flood protection based on substantial evidence in the
27 record.

28 (b) The effective date of amendments referred to in this section
29 shall be the date upon which the statutes of limitation specified in
30 subdivision (c) of Section 65009 have run or, if the amendments
31 and any associated environmental documents are challenged in
32 court, the validity of the amendments and any associated
33 environmental documents has been upheld in a final decision.

34 (c) This section does not change or diminish existing
35 requirements of local flood plain management laws, ordinances,
36 resolutions, or regulations necessary to local agency participation
37 in the national flood insurance program.

38 *SEC. 4. Section 65962 of the Government Code is amended to*
39 *read:*

65962. (a) Notwithstanding any other law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, each city and county within the Sacramento-San Joaquin Valley shall not approve a discretionary permit or other discretionary entitlement *for a building that would result in more than a 50-percent increase in allowed occupancy*, or a ministerial permit that would result in the construction of a new residence, for a project that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the project to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the permit or discretionary entitlement that will protect the project to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency ~~has made~~ *is making* adequate progress ~~on the construction of~~ *towards* a flood protection system which will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(4) The property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

SEC. 5. Section 66474.5 of the Government Code is amended to read:

66474.5. (a) Notwithstanding any other law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of each city and county within the Sacramento-San Joaquin Valley shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, for a subdivision that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the subdivision to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the subdivision that will protect the project to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency ~~has made~~ *is making* adequate progress ~~on the construction of~~ *towards* a flood protection system which will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(4) The property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments

1 and any associated environmental documents are challenged in
2 court, the validity of the amendments and any associated
3 environmental documents has been upheld in a final decision.

4 (c) This section does not change or diminish existing
5 requirements of local flood plain management laws, ordinances,
6 resolutions, or regulations necessary to local agency participation
7 in the national flood insurance program.

8 ~~SECTION 1. Section 65962 of the Government Code is~~
9 ~~amended to read:~~

10 ~~65962. (a) Notwithstanding any other law, after the~~
11 ~~amendments required by Sections 65302.9 and 65860.1 have~~
12 ~~become effective, each city and county within the Sacramento-San~~
13 ~~Joaquin Valley shall not approve a discretionary permit, other~~
14 ~~discretionary entitlement, or a ministerial permit that would result~~
15 ~~in the construction of a new residence, for any project that is~~
16 ~~located within a flood hazard zone unless the city or county finds,~~
17 ~~based on substantial evidence in the record, one of the following:~~

18 ~~(1) The facilities of the State Plan of Flood Control or other~~
19 ~~flood management facilities protect the project to the urban level~~
20 ~~of flood protection in urban and urbanizing areas or the national~~
21 ~~Federal Emergency Management Agency standard of flood~~
22 ~~protection in nonurbanized areas.~~

23 ~~(2) The city or county has imposed conditions on the permit or~~
24 ~~discretionary entitlement that will protect the project to the urban~~
25 ~~level of flood protection in urban and urbanizing areas or the~~
26 ~~national Federal Emergency Management Agency standard of~~
27 ~~flood protection in nonurbanized areas.~~

28 ~~(3) The local flood management agency has made adequate~~
29 ~~progress on the construction of a flood protection system which~~
30 ~~will result in flood protection equal to or greater than the urban~~
31 ~~level of flood protection in urban or urbanizing areas or the national~~
32 ~~Federal Emergency Management Agency standard of flood~~
33 ~~protection in nonurbanized areas for property located within a~~
34 ~~flood hazard zone, intended to be protected by the system. For~~
35 ~~urban and urbanizing areas protected by project levees, the urban~~
36 ~~level of flood protection shall be achieved by 2025.~~

37 ~~(4) The project is located in a developed area as defined by~~
38 ~~Section 59.1 of Title 44 of the Code of Federal Regulations.~~

39 ~~(b) The effective date of amendments referred to in this section~~
40 ~~shall be the date upon which the statutes of limitation specified in~~

1 subdivision (c) of Section 65009 have run or, if the amendments
2 and any associated environmental documents are challenged in
3 court, the validity of the amendments and any associated
4 environmental documents has been upheld in a final decision.
5 (c) This section does not change or diminish existing
6 requirements of local flood plain management laws, ordinances,
7 resolutions, or regulations necessary to local agency participation
8 in the national flood insurance program.

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